IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3769 of 2019
and CMP.No.11071 of 2023

S.Pappu ...Appellant

Vs.

1. M.Panneerselvam
2. M/s. National Insurance Company
   74 A, Paramathi Main Road,
   Namakkal.
3. S.Arul
4. P.S.Siva ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree dated 30.06.2011 made in M.C.O.P.No.263 of 2003 on the file of the Motor Accident Claims Tribunal, Namakkal.

For Appellant : Mr.K.T.S.Sivakumar for
Mr.K.Selvakumar

For Respondents : R1 – Exparte
Mr.S.Arun Kumar, for R2
No Appearance, for R3 & R4

JUDGEMENT

Challenging the judgment and decree dated 30.06.2011 made in M.C.O.P.No.263 of 2003 on the file of the Motor Accident Claims Tribunal, Namakkal, the appellant is before this Court.

2. The case of the appellant is that, on 22.06.1999 at about 5.00 am., when the deceased Sellappan was riding his TVS Suzuki bearing Regn.No.TN-28-D-9576 from North to South, near Venkateswara Timber Mart, the lorry bearing Regn.No.TN-28B0195, owned by the 1st respondent, insured with the 2nd respondent, driven by its driver in a rash and negligent manner hit the back side of the vehicle driven by the deceased, as a result of which the deceased fell down and sustained multiple injuries and died on spot. Thereby, the appellant and the 3rd & 4th respondents herein being the dependents of the deceased Sellappan filed a claim petition, claiming a compensation of Rs.7,50,000/-. After contest, the Tribunal, vide impugned judgment, fixed a compensation of Rs.4,00,000/- payable to the dependents of the deceased by the 1st and 2nd respondents. Aggrieved with the said order, the present appeal has been preferred by the appellant, seeking enhancement of the compensation fixed.

3. Learned counsel appearing for the appellant submitted that the above said accident happened solely due to the rash and negligent driving of the driver of the 1st respondent vehicle, for which FIR also came to be registered as against the driver of the 1st respondent vehicle. At the time of accident, the deceased was employed as Manager in Salem Central Co-operative Bank Branch and was earning a sum of Rs.18,000/- per month and though the deceased was aged about 56 years at the time of accident, however, the Tribunal had taken the age of the deceased as 57 years based on the SR book and awarded a sum of Rs.1,92,000/- towards loss of income after retirement by taking the monthly income of the deceased as Rs.3,000/-, which is not sustainable as the pension of the deceased has not been considered and further the compensation awarded under other heads are also very meagre and the same has to necessarily be enhanced. Accordingly, he prayed for appropriate orders for enhancement of the compensation fixed by the tribunal.

4. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any

enhancement. Accordingly, he prays for dismissal of the appeal.

5. Heard the learned counsel for the appellant as well as the 2nd respondent and perused the materials available on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded. A perusal of the award reveals that, the tribunal awarded a sum of Rs.1,44,000/- towards loss of income before retirement by taking the monthly income as Rs.18,000/-. In fact, there is no dispute with regard to the said compensation fixed by the Tribunal by the claimants. However, the award of the Tribunal in sum of Rs.1,92,000/- as loss of income, after the date of retirement by taking the income as Rs.3,000/-, is put in issue, as it is the case of the appellant that the deceased was earning a sum of Rs.18,114/- per month, which has been accepted by the Tribunal, applying the ratio laid down in ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** the Tribunal, ought to have fixed the notional income of the deceased properly, as

it has been the consistent view of the courts that even a housewife is entitled to fixation of monthly notional income, with regard to the work discharged by her in the household. Therefore, the fixation of Rs.3000/- as notional income is wholly unreasonable.

7. The fixation of notional income had been considered by the Apex Court in *Syed Sadiq case (supra)* and, therefore, the deceased is entitled to fixation of appropriate notional income, even after his death, considering the fact that while he was employed he was earning a sum of Rs.18,114/- per month, which has been accepted by the Tribunal. Therefore, considering the emoluments earned by the deceased prior to his death, it could safely be concluded that the deceased would have earned around 50% of what he was earning after his retirement, more so, the deceased was not claimed to be incapacitated in any form medically. Therefore, applying the ratio laid down by the Hon'ble Supreme Court in the above cited case, this Court fixes the notional income of the deceased at Rs.12,000/- and adding 10% towards future prospects, the loss of income per month is quantified at Rs.13,200/- and deducting 1/4th towards the personal expenses of the deceased, the loss of

income to the family is quantified at Rs.9,900/- per month. The deceased being aged about 57 years, as evidenced from the records, adopting the multiplier of 8 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of income to the family is fixed at Rs.9,50,400/- (9,900/- * 12 * 8 = Rs.9,50,400/-)

Loss of Income	**Amount (in Rs.)**
Notional income (Per month)	12,000 (9000+3000)
Add: Future Prospects (Rs.12,000 x 10%) (Per month)	1,200
	13,200
Less: Personal expenses (1/4th) (Rs.13,200/- x 1/4) (Per month)	3,300
	9,900
Notional income (per annum) (Rs.9,900/- x 12)	1,18,800
Multiplier	8
Total	**9,50,400/-**

8. A sum of Rs.40,000/- has been granted to the claimants under the head of "loss of love and affection", which is meagre and the same requires to be enhanced to a sum of Rs.1,20,000/- (40,000 * 3 = 1,20,000/-). The Tribunal has granted a sum of Rs.4,600/- under the head of "funeral expenses", which is also meagre and the same is also enhanced to a sum of Rs.15,000/-. No amount has been granted under the head of "Loss of Estate". Therefore, a sum of

Rs.15,000/- is be awarded under this head. Insofar as the compensation awarded under the head Medical expenses, this Court feels that the same is just and reasonable and the same does not require any interference.

9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income before retirement	**1,44,000/-**	**1,44,000/-**
Loss of Income after retirement	**1,92,000/-**	**9,50,400/-**
Loss of love and affection (Rs.40,000/- x 3)	**40,000/-**	**1,20,000/-**
Transportation and ambulance expenses	-	15,000/-
Funeral Expenses	**4,600/-**	**15,000/-**
Loss of estate	-	15,000/-
Medical expenses	**19,400/-**	**19,400/-**
Total	**4,00,000/-**	**12,78,800/-**

10. The appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.4,00,000/-** to **Rs.12,78,800/-**. The second respondent-Insurance Company is directed to

deposit the above said amount to the credit of M.C.O.P.No.263 of 2003 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. From the said award amount, the appellant/ 1st claimant is entitled to a sum of Rs.7,78,800/- and the 3rd and 4th respondents /2nd and 3rd claimants are entitled to a sum of Rs.2,50,000/- each.

11. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimants through RTGS within a period of two weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The claimants are directed to pay necessary additional Court fee on the enhanced compensation amount. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous petition is closed.

16.11.2023

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1.The Motor Accidents Claims Tribunal,
Namakkal.

2.The Section Officer,
V.R. Section,
High Court, Madras.

M.DHANDAPANI, J.

skt

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